IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

Crl.MC.No. 3709 of 2007()

CC.600/1994 of ADDL.CHIEF JUDICIAL MAGISTRATE, ERNAKULAM
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PETITIONER: ACCUSED IN C.C.600/94

K.M.CHERIAN, KUNNATHU MAKKED,
ANCHEL PETTY, PAMPAKUDA P.O.

BY ADV. SRI.P.P.JACOB

RESPONDENTS: COMPLAINANT CC 600/94
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1. **PHILIP THOMAS, HOUSE NO.38/356,**
   KUDILIL, S.A.ROAD, KOCHI-16.

2. **STATE OF KERALA, REPRESENTED BY**
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3709 of 2007

Dated this the 13th day of December, 2007

O R D E R

Petitioner is the accused in a prosecution under Section 138 of the Negotiable Instruments Act. He was found not guilty and acquitted by the learned Magistrate in the trial. Against the said judgment of acquittal, the complainant came before this Court in Crl.Appeal No.217 of 2001. This Court allowed the appeal and directed the complainant to appear before the court below on 17.08.06 and take necessary steps to effect service on the petitioner herein. The petitioner was not served thereafter. Long later, he appeared before the learned Magistrate and by order dated 23.11.07, bail was granted to him subject to conditions. He was directed to execute a bond for Rs.1 lakh with 2 solvent sureties each for the like sum. He was further directed to pay an amount of Rs.65,000/- as a condition for release on bail. He was specifically directed to deposit an amount of Rs.5,000/- on 23.11.07 itself and the balance amount within a period of 2 weeks. The petitioner somehow raised the amount of Rs.5,000/-,

but the balance amount could not be paid. Consequently a warrant of arrest is issued against the petitioner now.

2. The petitioner has come to this Court aggrieved by the surviving direction to pay the balance amount of Rs.60,000/-. I agree with the learned counsel for the petitioner that the condition imposed is onerous. The petitioner has been found not guilty and acquitted by the court once. Thereafter there is nothing to show that the petitioner was served and there was any contumacious responsibility on the part of the petitioner for his non appearance later till 23.11.07. The counsel submits that if no proper steps had been taken by the complainant and the petitioner is not served, the petitioner cannot be penalised for that.

3. Be that as it may, I am satisfied that the direction to remit the amount of Rs.65,000/- as a condition for bail against an accused who was once found not guilty and acquitted is not justified in the facts and circumstance of the case where he is not shown to have any contumacious responsibility for the effective progress of the case.

4. This petition is accordingly allowed. The direction to pay the balance amount of Rs.60,000/- is set aside.

5. The learned counsel for the petitioner submits that the petitioner could not appear within a period of 2 weeks as already directed and consequently a warrant of arrest is issued against the petitioner. There shall be a direction that the said warrant of arrest issued against the petitioner shall not be executed and the petitioner shall be permitted to continue on bail on the strength of the bond already executed by him on 23.11.07.

(R.BASANT, JUDGE)

rtr/-